

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2010-05 ST
July 13, 2010

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ISSUES**Sales Tax – Application of Exemptions to Leased Equipment**

A company ("Taxpayer") is seeking an opinion as to the application of the blanket and single exemption declarations in instances where Taxpayer leases equipment (1) on a capital/finance basis and (2) on an operating basis for a 60-month term.

Authority: [IC 6-2.5-1-5](#); [IC 6-2.5-1-21](#); [IC 6-2.5-2-1](#); [IC 6-2.5-4-10](#); [45 IAC 2.2-4-27](#)

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling:

[Taxpayer] is engaged in the third party equipment leasing business within and outside of [Indiana].

[Taxpayer] offers two basic varieties of leases to Indiana customers which are generally referred to as capital/finance (option to purchase is less than \$100 or less than one percent of the total lease payments) and operating leases (option to purchase is greater than \$100 or greater than one percent of the total lease payments).

Based on the foregoing facts, Taxpayer requests a ruling as to the application of the blanket and single exemption declarations available to taxpayers on the Form ST-105 "General Sales Tax Exemption Certificate." In particular, Taxpayer requests a ruling as to two questions related to the application of the blanket and single exemption declarations in instances where Taxpayer leases equipment (1) on a capital/finance basis and (2) on an operating basis for a 60-month term. Taxpayer's specific questions are (a) whether all future lease payments are exempt from sales tax on the contract during the 60-month term and (b) whether all costs that are passed through to the lessee, such as personal property taxes, are exempt from sales tax during the 60-month lease.

DISCUSSION

Pursuant to [IC 6-2.5-2-1](#), sales tax is imposed on retail transactions made in Indiana. Pursuant to [IC 6-2.5-4-10\(a\)](#), "[a] person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease." [IC 6-2.5-4-10\(b\)](#) continues: "[a] person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business."

[IC 6-2.5-1-21\(a\)](#) defines, in pertinent part, leases to include "any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend." Pursuant to the same statute, a lease does not include "a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments[.]"

The Department's regulation, found at [45 IAC 2.2-4-27\(c\)](#), provides:

In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

The term "actual receipts" is defined at [45 IAC 2.2-4-27\(d\)](#):

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental [or] lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

Pursuant to [45 IAC 2.2-4-27\(d\)\(2\)](#), sales tax is due on the lease payments:

Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or

on some other periodic basis, each payment period shall be considered a completed transaction.

Accordingly, if the lease requires the transfer of title upon completion of required periodic payments and payment of an option price that exceeds the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments, then sales tax is due on the lease payments when made, unless the lessee presents the lessor with an exemption certificate.

If the lease requires the transfer of title upon completion of required periodic payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments, then there is no valid lease agreement, and the transaction is treated as a sale. If, pursuant to [IC 6-2.5-13-1](#), the sale is sourced to Indiana, sales tax must be collected and remitted at the time of the sale based on the gross retail income received by the retail merchant, unless the purchaser presents the retail merchant with an exemption certificate.

[IC 6-2.5-1-5\(b\)](#) provides that, among other things, "gross retail income" (i.e., the amount of a transaction that is subject to sales tax) does not include that part of gross receipts attributable to:

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

Based on the foregoing authority, the following statements represent the application of the blanket and single exemption declarations in instances where Taxpayer leases equipment (1) on a capital/finance basis and (2) on an operating basis for a 60-month term.

1. In instances where Taxpayer receives a valid and complete Form ST-105 on a capital/finance lease (option to purchase of \$1.00) with a term of 60 months:

a. The "lease" is actually a sale under Indiana law. As such, sales tax must be collected and remitted at the time of the sale based on the gross retail income received by the retail merchant. However, since the purchaser has presented Taxpayer with a valid Form ST-105, the purchase is exempt from Indiana sales tax, whether the blanket purchase exemption request or single purchase exemption request box is checked.

b. The gross retail income of the transaction does not include any of the items contained in [IC 6-2.5-1-5\(b\)](#), including any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser. Because property taxes are imposed on the purchaser in this situation (since the purchaser becomes the owner of the property), they are not included in the gross retail income of the transaction and not subject to tax.

2. In instances where Taxpayer receives a valid and complete Form ST-105 on [an] operating lease (residual is Fair Market Value) with a term of 60 months:

a. All future lease payments are exempt from sales tax during the 60-month term, whether the blanket purchase exemption request or single purchase exemption request box is checked. As a technical matter each lease payment in this scenario constitutes a separate and distinct transaction. However, because it is unlikely that an exemption would apply to one lease payment but not the remainder of payments, the Department exempts all lease payments even when the single purchase exemption box is checked.

b. The gross retail income of the transaction does not include any of the items contained in [IC 6-2.5-1-5\(b\)](#), including any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser. Because property taxes are imposed on the lessor in an operating lease scenario (since the lessor remains the owner of the property), they are included in the gross retail income of the transaction and subject to tax.

RULING

In instances where the transaction consists of a capital/finance lease (option to purchase is less than \$100 or less than one percent of the total lease payments), the "lease" is actually a sale under Indiana law. As such, sales tax must be collected and remitted at the time of the sale based on the gross retail income received by the retail merchant. However, if the purchaser presents the retail merchant with a valid Form ST-105, the purchase is exempt from Indiana sales tax, whether the blanket purchase exemption request or single purchase exemption request box is checked.

In instances where the transaction consists of an operating lease (option to purchase is greater than \$100 or greater than one percent of the total lease payments), sales tax is due on each recurring periodic payment of the lease term. Whether the lessee presents the retail merchant with a Form ST-105 with the blanket purchase

exemption box or single purchase exemption box checked, all future lease payments are exempt from sales tax.

The gross retail income of the transaction does not include any of the items contained in [IC 6-2.5-1-5\(b\)](#), including any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser. Because property taxes are imposed on the purchaser in a capital/finance lease scenario (since the purchaser becomes the owner of the property), such charges are not included in the gross retail income of the transaction and not subject to tax. Because property taxes are imposed on the lessor in an operating lease scenario (since the lessor remains the owner of the property), such charges are included in the gross retail income of the transaction and subject to tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue

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